

CHAPTER 10 COMPLAINT PROCEDURE

[Ch 10, IAC 11/3/75 rescinded see Ch 11]

[Prior to 10/8/86, Beer and Liquor Control Department[150]]

185—10.1(123,17A) Statute of limitations. An administrative hearing complaint alleging a violation of Iowa Code chapter 123 must be filed with the division or with the local authority within one year from the date of the alleged violation or within one year from the date of a conviction for a violation of Iowa Code chapter 123, whichever is later.

This rule is intended to implement Iowa Code section 123.39.

185—10.2(123,17A) Forms. Administrative hearing complaints do not have to be filed with the administrator in cases involving an automatic suspension or an automatic revocation pursuant to Iowa Code section 123.50 or 123.96; administrative cases involving an automatic suspension or an automatic revocation are initiated in front of the administrator by mailing the administrator a copy of the criminal conviction on which the automatic suspension or automatic revocation rests. An administrative hearing complaint must be filed in cases which seek as relief a discretionary suspension or a discretionary revocation pursuant to Iowa Code section 123.39.

The complaint shall substantially comply with the form prescribed in 185—subrule 12.2(9). The complaint shall be filed with the Alcoholic Beverages Division, 1918 S.E. Hulsizer, Ankeny, Iowa 50021. The local approving authority and the administrator of the division, or the administrator's designated hearing officer, have jurisdiction to suspend or revoke licenses and permits for violations of Iowa Code chapter 123. The administrator of this division, or the designated hearing officer, has jurisdiction of cases in which licensees or permittees are charged with violating provisions of Iowa Code chapter 123 and local ordinances. The administrator of this division does not have jurisdiction of cases based solely on violations of local ordinances. Complaints based solely on violations of local ordinances must be heard either by a city council or a county board of supervisors. Administrative hearing complaints which are to be heard by the administrator of this division, or the designated hearing officer, which charge permittees or licensees with violating provisions of Iowa Code chapter 123 must be signed by a county attorney, a city attorney, a representative of the Iowa department of public safety, or an employee of the division other than the person who is going to be the hearing officer, and shall be filed with the licensing division, alcoholic beverages division. Administrative hearing complaints to be heard by a city council, charging permittees or licensees with violating provisions of Iowa Code chapter 123 or city ordinances, must be signed by a city attorney and filed in the city clerk's office. Administrative hearing complaints which are to be heard by a county board of supervisors must be signed by a county attorney and filed in the county auditor's office.

This rule is intended to implement Iowa Code sections 123.39 and 17A.12.

185—10.3(123,17A) Notice of hearing. Upon the filing of a complaint, the division shall send notice of hearing to all interested parties, or their counsel, by certified mail or by personal service in civil actions, at least ten days prior to the date of the hearing, unless a shorter period of time is agreed upon by all parties. The notice shall include the time, place and nature of the hearing and a reference to the particular sections of the statutes or rules involved.

This rule is intended to implement Iowa Code sections 123.39 and 17A.12.

185—10.4(123,17A) Continuance. Requests for continuances shall be made to the division, in writing, not less than three days prior to scheduled hearing date. Request for more than one continuance shall be granted only when good cause is shown. Requests for continuances within three days of the hearing date must be based upon emergency reasons.

This rule is intended to implement Iowa Code sections 123.39 and 17A.11.

185—10.5(123,17A) Hearing officer. The administrator, or a designated member of the division staff, will preside as hearing officer, or an administrative hearing officer available under Iowa Code chapter 17A shall preside at the hearing.

This rule is intended to implement Iowa Code sections 123.39 and 17A.11.

185—10.6(123,17A) Neutrality of hearing officer. The presiding officer shall sit as a neutral hearing officer. A party to a contested case proceeding may, at any time up to three days prior to scheduled hearing date, file an affidavit with the division challenging the neutrality of the presiding officer. Such affidavit shall assert disqualifications of the presiding officer by reason of personal bias or that the presiding officer has either prosecuted or advocated the position in connection with that case, in the specific controversy underlying that case, in another pending factually related controversy that may culminate in a contested case involving the same parties. The division shall determine the matter as part of the record in the case. When the division, in these circumstances makes such a determination with respect to the presiding officer, that determination shall be subject to de novo review in any subsequent review proceeding.

This rule is intended to implement Iowa Code sections 123.39 and 17A.11.

185—10.7(123,17A) Power of hearing officer. The hearing officer shall have the following authority:

1. To regulate the course of hearings, the recessing, reconvening and adjournment thereof, unless otherwise ordered by the division;
2. To administer oaths and affirmations;
3. To rule upon admissibility of evidence and offers of proof;
4. To take or cause depositions to be taken;
5. To dispose of procedural matters and to dispose of motions to dismiss proceedings or other motions which involve final determination of proceedings, subject to review by the hearing board upon application by the aggrieved party;
6. To permit the filing of written briefs, if any, and to fix the conditions thereof and the time for filing of written briefs and to provide for the service thereof on the parties;
7. To hold appropriate conferences before and during hearings;
8. To take any other action necessary or appropriate in the discharge of vested duties, consistent with law and with the rules and orders of the department.

This rule is intended to implement Iowa Code sections 123.39 and 17A.11.

185—10.8(123,17A) Subpoenas. After the commencement of a contested case, the hearing officer shall have the authority to issue subpoenas or subpoenas duces tecum in such cases. Discovery procedures applicable to civil actions shall be available to all parties in contested cases. Evidence obtained in such discovery may be used in the hearing if that evidence is otherwise admissible in the hearing. If the division relies on a witness in a contested case, whether or not a division employee, who has made prior statements or reports with respect to the subject matter of the witness's testimony, the administrator shall, on request, make such statements or reports available to the parties for use on cross-examination, unless those statements or reports are otherwise expressly exempt from disclosure by constitution or statute. Identifiable alcoholic beverages division records that are relevant to the disputed material facts involved in the controversy, shall, upon request, promptly be made available to a party unless the requested records are expressly exempt from disclosure by constitution or statute.

This rule is intended to implement Iowa Code sections 123.39 and 17A.13.

185—10.9(123,17A) Ex parte communications. Parties or their representatives in a contested case shall not communicate with the presiding officer, except as otherwise provided in this chapter, directly or indirectly, in connection with any issue of fact or law in that contested case. Any prohibited communication shall be included in the record of the proceedings and a decision may be made against any party who violates this rule.

This rule is intended to implement Iowa Code sections 123.39 and 17A.17.

185—10.10(123,17A) Open hearings—record. Hearings shall be open to the public and shall be recorded either by mechanized means or by certified shorthand reporters. The hearing or any portion

thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of the hearing or the transcription thereof shall be filed with and maintained by the division for a five-year period from the date of the decision by the hearing officer. All papers, briefs, motions, rulings by the hearing officer, and decisions connected with that contested case shall comprise the record of that contested case.

This rule is intended to implement Iowa Code sections 123.39 and 17A.12.

185—10.11(123,17A) Representation by counsel. All persons who are parties to a contested case shall have the right to be represented by counsel of their choice and at their expense. Service of notices, briefs, and other papers concerning any item relevant to the proceeding may be served on the counsel of the parties to a contested case.

This rule is intended to implement Iowa Code sections 123.39 and 17A.12.

185—10.12(123,17A) Failure to appear. If a party to a contested case fails to appear, after proper service of notice, the hearing officer may, if no adjournment is granted, proceed with the hearing and render a decision in the absence of the party. The hearing officer may enter a default judgment against the party failing to appear.

This rule is intended to implement Iowa Code sections 123.39 and 17A.12.

185—10.13(123,17A) Decisions. Upon completion of the receipt of testimony, documents, exhibits and the filing of briefs, if any, the hearing officer shall issue a decision. Said decision shall state finding of fact, based solely on evidence in the record or matters officially noticed in the record; shall be in writing or stated in the record; shall state separately conclusions of law, supported by cited authority or by a reasoned opinion; and shall be a final decision. Parties shall be promptly notified of the decision by delivery to them of a copy of the decision.

This rule is intended to implement Iowa Code sections 123.39 and 17A.15.

185—10.14(123,17A) Appeal to administrator from local authority disapproval of license or permit application and contested cases. Upon receipt of an application for a liquor control license, wine or beer permit which has been disapproved by a local authority, the administrator or the administrator's designee shall notify the license applicant by certified mail, return receipt requested, that the applicant may appeal the local authority's disapproval of application to the division.

10.14(1) The license or permit applicant shall notify the administrator or the administrator's designee in writing within 21 days from the date of receipt of the notification that the applicant intends to appeal the local authority's disapproval of the application for a liquor control license, wine or beer permit. The applicant's notice of intent to appeal the local authority's disapproval of the application must be received by the division not later than 4:30 p.m. on the twenty-first day following the date of receipt of notification from the division. If the twenty-first day following the date of receipt of notification by the division occurs on a Saturday, Sunday, or legal holiday, the applicant shall have until 4:30 p.m. on the first business day following the Saturday, Sunday, or legal holiday to file a notice of intent to appeal the local authority's disapproval of the application. The division shall accept facsimile transmissions of a notice of intent to appeal; however, the applicant is solely responsible for confirming that the transmission has been received by the division within the required time frame.

10.14(2) The administrator may appoint a representative of the division or request an administrative law judge from the department of inspections and appeals to preside at the evidentiary hearing and to render a proposed decision. The evidentiary hearing shall be conducted in accordance with Iowa Code chapter 17A; the applicant shall be afforded the opportunity to demonstrate that the applicant complies with all the lawful requirements for holding the liquor control license, wine or beer permit.

10.14(3) Following the evidentiary hearing, the person designated by the administrator to preside at the evidentiary hearing shall render a proposed decision to approve or disapprove the application for a liquor control license, wine or beer permit.

10.14(4) The administrator may review the proposed decision on the administrator's own motion by notifying the parties to the appeal in writing by forwarding the proposed decision together with an

order of intent to review the proposed decision by certified mail, return receipt requested. The administrator may request briefs and exceptions from the parties to the appeal on any and all issues raised in the evidentiary hearing. The administrator shall review the proposed decision on the record made at the evidentiary hearing and on the briefs and exceptions filed by the parties to the appeal. The administrator may affirm, reverse or modify the proposed decision. The decision of the administrator is final agency action for the purpose of filing a petition for judicial review in accordance with Iowa Code chapters 123 and 17A.

10.14(5) If the administrator does not elect to review the proposed decision on the administrator's own motion, a party to the appeal who is aggrieved by the proposed decision may file a request for review of the proposed decision within 21 days following the date on which the party received the proposed decision. A request for review shall be filed in accordance with subrule 10.14(1). The administrator may request briefs and exceptions from the parties to the appeal on any and all issues raised in the evidentiary hearing. The administrator shall review the proposed decision on the record made at the evidentiary hearing and on the briefs and exceptions filed by the parties to the appeal. The administrator may affirm, reverse or modify the proposed decision. The decision of the administrator is final agency action for the purpose of filing a petition for judicial review in accordance with Iowa Code chapters 123 and 17A.

10.14(6) Except as provided in subrule 10.14(7), a party who is aggrieved by the proposed decision shall not be deemed to have exhausted administrative remedies unless the aggrieved party files a request for review of the proposed decision within the time provided in subrule 10.14(1) and the administrator has reviewed the proposed decision and has affirmed, reversed, or modified the proposed decision.

10.14(7) Except as provided in this subrule, this rule also applies to all contested case matters which involve the suspension, revocation or imposition of a civil penalty upon a liquor control licensee, wine or beer permittee for violations of Iowa Code chapter 123 or local ordinances. The suspension, revocation, or imposition of a civil penalty pursuant to Iowa Code subsection 123.50(3) by the administrator is final agency action for the purpose of filing a petition for judicial review in accordance with Iowa Code chapters 123 and 17A.

This rule is intended to implement Iowa Code sections 123.32 and 123.39 and chapter 17A.

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